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275519

May 28, 1999

**For Settlement Purposes Only**  
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Sherry Estes, Esq.  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region V  
77 West Jackson Boulevard (C-29A)  
Chicago, Illinois 60604

Re: ***Skinner Landfill***

Dear Ms. Estes:

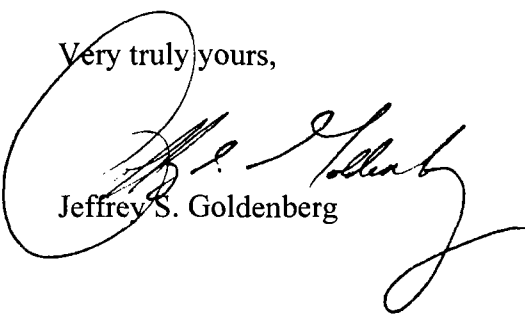
The Cincinnati Gas & Electric Company entered into a de minimis settlement agreement earlier this year with the Plaintiffs in the Skinner Landfill private cost recovery action in the United States District Court for the Southern District of Ohio. In addition to providing for settlement of Plaintiffs' claims regarding their past costs at the Skinner Site, that agreement requires certain of the Plaintiffs to seek to negotiate a de minimis settlement between the Cincinnati Gas & Electric Company and the United States (on behalf of the U.S. Environmental Protection Agency ("EPA")) that is at least as protective of the Cincinnati Gas & Electric Company's interests as are the terms of EPA's Model De Minimis Consent Decree set forth in the December 7, 1995 Federal Register.

It is the Cincinnati Gas & Electric Company's understanding that the EPA, Region V has now determined what information it will require in order to determine that the Cincinnati Gas & Electric Company qualifies for a de minimis settlement at this Site. That information consists of: (i) the summary of each de minimis settlor's waste-in volume and percentage share of Site costs, as determined by the Allocator in the Final Allocation Report from the Skinner Alternative Dispute Resolution process, and (ii) the narrative description of the Allocator's findings for each de minimis settlor, as set forth in the Preliminary Allocation Report, and where the Allocator supplemented or altered those findings in the Final Allocation Report, the Final Allocation Report.

Accordingly, I am enclosing the information requested by the EPA for the Cincinnati Gas & Electric Company. I believe that this information sufficiently demonstrates that the Cincinnati Gas & Electric Company is entitled to a de minimis settlement pursuant to the EPA's model de minimis settlement decree. The Cincinnati Gas & Electric Company understands that the EPA and Plaintiffs in the private cost recovery litigation will allocate among themselves the monies to be paid by the Cincinnati Gas & Electric Company in settlement of the claims of Plaintiffs and the United States. By making this settlement offer, the Cincinnati Gas & Electric Company does not acknowledge any liability for response costs at the Skinner Site.

In order to ensure that the Cincinnati Gas & Electric Company is able to avoid the incurrence of additional transaction costs in connection with the ongoing Skinner cost recovery litigation, the Cincinnati Gas & Electric Company urges the EPA to finalize an appropriate de minimis settlement as expeditiously as possible. Such timely action would fulfill the statutory objectives of Section 122(g) of CERCLA and the EPA's de minimis settlement policies, as well as provide needed funds for response actions at the Skinner Site. Thank you for your attention to this matter.

Very truly yours,



Jeffrey S. Goldenberg

Enclosures

cc: John J. Finnigan, Esq. (w/o enclosures)  
John C. Murdock, Esq. (w/o enclosures)

## **Cincinnati Gas & Electric Company**

Settlement Amount: \$2,295.92

### **Excerpt from Allocator's Preliminary Report :**

CG&E was identified as a user of the Landfill by Ray Skinner during his deposition. It is a voluntary ADR participant.

CG&E has a facility located at 7600 Kemper Road, Cincinnati (the "Brecon Facility"). The company purchased this property over a number of years beginning with the first parcel in 1955. Additional parcels were bought in 1958, 1964, 1966, 1967, 1974, 1978, 1991 and 1993. Portions of the property were sold to the Board of County Commissioners in 1996 for use as athletic fields. CG&E used the property for repairs and maintenance on its vehicles. Materials and supplies are also stored at this facility for use by field crews who also use this location as a home base. In addition, used, non-working transformers are collected at this location from other districts and then shipped for evaluation to a facility on Dana Avenue.

Other facilities within 75 miles of the Site include:

#### **Generating Stations:**

Beckford Generating Station in New Richmond, OH;  
East Bend Generating Station in Rabbit Hash, KY;  
Miami Fort Generating Station in North Bend, OH; and  
Zimmer Generating Station in Moscow, OH.

#### **Peaking Stations:**

Dick's Creek Peaking Station in Monroe, OH; and  
Woodsdale Peaking Station in Trenton, OH.

#### **Substations:**

Anderson Ferry, 4666 River Road, Cincinnati, OH;  
Augustine, Covington, KY;  
California, 101 Renslar, Cincinnati, OH;  
Charles, 350 Charles, Cincinnati, OH;  
Front Street, 678 Mehring Way, Cincinnati, OH;  
Huntsville, 6700 Yankee Road, Huntsville, OH;  
Norwood, 2340 Seymour Avenue, Cincinnati, OH;  
Oakley, 3500 Cardiff, Cincinnati, OH;  
Price Hill, 3452 Warsaw Avenue, Cincinnati, OH;  
Port Union, 5300 Rialto Road, West Chester, OH;  
Terminal, 7 Staburn Avenue, Cincinnati, OH.

Other Operating Locations:

Batavia, 92 S. Fourth Street, Batavia, OH;  
Brecon Overhead, 7600 East Kemper Road, Cincinnati, OH;  
Central Area and Riverfront, East Fourth Street, Cincinnati, OH;  
Dana, Dana Avenue, Cincinnati, OH;  
Fairfield, 1199 Nilles Road, Fairfield, OH;  
Garver Road, 204 Garver Road, Monroe, OH;  
Georgetown, 509 East Ohio Avenue, Georgetown, OH;  
Glendale, 10961 Evendale Avenue, Cincinnati, OH;  
Hamlet, 3443 State Route 132, Hamlet, OH;  
Hartwell, 59 Caldwell, Cincinnati, OH;  
Little Miami, 1099 State Route 28, Milford, OH;  
Loveland, 300 West Loveland, Loveland, OH;  
Middletown, 1 North Main Street, Middletown, OH;  
Montfort Heights, 5445 Audro Drive, Cincinnati, OH;  
Oxford, 36 West High Street, Oxford, OH;  
Park 50, 5300 DuPont Circle, Milford, OH;  
Queensgate, 424 Gest Street, Cincinnati, OH;  
Todhunter, 593 Todhunter Road, Monroe, OH;  
Valley View, 670 North Bend Road, Cincinnati, OH;  
Western Hills, 6374 Bridgetown Road, Cincinnati, OH.

CG&E has an affiliated company, PSI Energy, Inc. ["PSI"] which is located in Plainfield, Indiana. A merger between these companies occurred in 1994. CG&E also has two wholly-owned subsidiaries, The Union Light, Heat and Power Company and Lawrenceburg Gas Company, which are within a 75-mile site radius.

The company owns transformers, transmission towers, utility poles, electric conductors and gas storage facilities throughout the area in order to provide gas and electric service to its customers in Hamilton, Butler, Preble, Clermont, Brown, Adams, Warren, Clinton and Montgomery Counties.

Ray Skinner testified that CG&E disposed of transformers at the Site in the 1960s. CG&E said that it sent no materials to the Skinner Site. Ray Skinner's statement about CG&E trucks delivering transformers to the Site was contrary to procedures used by CG&E to dispose of used transformers throughout the relevant time period, CG&E explained. CG&E stated that it accumulated non-working distribution transformers at six district operations facilities which, in turn, sent them to the Brecon Facility for central management. After a sufficient number had accumulated, CG&E's Material & Repair ("M&R") facility on Dana Avenue evaluated each transformer to determine if it could be repaired or should be scrapped (i.e., sold to a company for reconditioning and re-sale or sold for salvage value). Whenever transformers were sold, several form documents were prepared. The documents covering the relevant time period are still in storage and were reviewed for the response to the ADR Questionnaire. There is no record of the company selling or giving any transformers to Skinner. Indeed, the company stated that it never transported transformers to waste disposal sites.

CG&E stated that its transformers were non-PCB transformers, but "a small percentage of these transformers contained PCBs as a contaminant from the manufacturing process."

Further, the company argued that while Ray Skinner testified that the transformers he saw at the Landfill had either CG&E's name or initials painted on them, the company has never had its name or initials on transformers, CG&E said. The company said that Mr. Skinner also claimed that the transformers were labeled "PCBs." Since Mr. Skinner is referring to a pre-TSCA [pre-1978] time frame, CG&E stated that there would have been no reason to have such a label. Its employees who handled transformers have stated that no transformers were labeled "PCB" before TSCA. CG&E said that Mr. Skinner mentioned Chem-Dyne as delivering transformers to the Site. However, CG&E says that there is no evidence that Chem-Dyne was used by CG&E, and no employee recollected ever using Chem-Dyne for disposal, transport or scrapping of any CG&E transformers. I note that Ray Skinner described the transformers from Chem-Dyne as being quite large and quite heavy (perhaps building transformers) as opposed to what appeared to be a description of pole-mounted distribution transformers from CG&E.

There was also a deposition statement that utility poles were sent to the Site by CG&E. CG&E denied this as well, stating that its Brecon facility was the main handling site for such poles at least since the 1950s. Most utility poles were reused by CG&E employees or members of the public for personal use, such as for fencing or landscaping. The demand was so great that not many poles ever were available for disposal. Those that remained were taken by Brecon employees to other CG&E facilities where they were cut down to use for lumber. CG&E stated that it did not dispose of utility poles outside of its own property until the 1990s when BFI and Rumpke began to collect the pole pieces in dumpsters.

Ray Skinner also testified that the company disposed of "pearlite" at the Skinner site from tanks at a Crescent Springs, KY location. In response, the company claims that it does not and has never had operations in Crescent Springs, Kentucky.

Mr. Skinner also testified regarding disposal of "shop waste" by CG&E. The company denied this allegation and said that it did not conduct any manufacturing operations at Brecon and the business activities that it did conduct did not generate any sort of "shop waste."

The company used the following Exhibit A transporters:

1. To haul garbage, construction and demolition debris and soil: Rumpke, BFI, and King Container. The company claimed that these materials were hauled to sites other than Skinner.
2. To haul new and rebuilt transformers and failed transformers between CG&E and the factories where the transformers were manufactured or rebuilt: B&O Railroad, Conrail, New York Central Railroad Company and Penn Central.
3. CG&E used The Maxwell Company to deliver new transformer oil to CG&E.

The company named about 8 individuals that it interviewed and then stated that it "also interviewed 388 of its operations employees, many of whom have over 30 years of service." It made a confidential submittal of the interview results which I have reviewed. CG&E also reviewed 68 boxes of detailed transformer records and there is no evidence of any material being sent, directly or indirectly, to the Skinner landfill. It made a confidential submittal of some of these records dated in 1974 or later which I also have reviewed. CG&E argues that the only reason Ray Skinner saw CG&E trucks on his property was to read the electric meters.

Having reviewed the submittal of CG&E and studied the testimony of Ray Skinner, I am left again with the gnawing feeling associated with an irreconcilable conflict of evidence on a limited record. Some facts work in CG&E's favor. Ray Skinner could not have seen the letters "PCB" on distribution transformers when he was young because those letters were not put on distribution transformers in the 1950s or 1960s. I also tend to think that CG&E would prevail before a trier of fact on the issue of utility pole disposal, although I am not sure that it could win a summary judgment on this issue. And certainly there were reasons for CG&E to manage its out-of-service distribution transformers because of their metal content.

On the other hand, Ray Skinner has described what I understand to have been the historic process for removing the copper from transformers (p. 105-107). The use of oil removed from transformers for dust control, as Ray Skinner testified, would not be surprising. And Ray Skinner was muted in the discussion of disposal of other wastes limiting the amount and frequency of such disposal to isolated instances which is not implausible to me.

It is extremely difficult to rebut direct testimony about disposal in the 1950s or 1960s with employees who do not date back that far in their employment or descriptions of later practices that may or may not have been religiously followed in the 1950s or early 1960s. This is one of the reasons why landfill cases without good records have the potential of creating enormous litigation expense in a liability setting like that under CERCLA.

**Waste-In Amount.** On balance, I have decided at this juncture that CG&E should not be assigned any waste-in for transformers. I have concluded that it should be assigned a waste-in amount for poles, shop waste, tree mulchings and an occasional light ballast in an amount of 100 cys. I have assumed 20 trips at 5 cy per trip based on the use of a small dump truck and based on the testimony of Ray Skinner on the number of times he estimated CG&E vehicles came to the Landfill (which I have reduced from a number that was considerably more than 100 times).

Final Allocation Recommendations in Alphabetical Order, Skinner Landfill Superfund Site, April 12, 1999

Name Of Party	Solid Waste In Cys	Liquid Waste In Gallons	Solid Waste In Total Cys 372906	Percentage	Liquid Waste In Total Gallons 262252	Percentage	Solid Waste	Liquid Waste	Owner/ Operator & Part of Chem-Dyne	Rest of Chem- Dyne	Total
CINCINNATI GAS & ELECTRIC COMPANY	100	0	372906	0.0268%	262252	0.0000%	0.00%	0.00%			0.00268%